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CRL.O.P.No.18912 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.18912 of 2019

B.Rajendra Kumar Jain

.. Petitioner/complainant

Versus

1.Suresh Bafna

2.Suresh Bafna

Prop.M/S.SriChandraprabhu Agency

3.Bharath Mardia

4.Bharath Mardia

Director of M/S.Mardia

Sons Holding Pvt. Ltd.,

... Respondents/ Accused

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in Crl.R.C.No.33 of 2018 on the file of the II Additional Sessions Court, Chennai and Crl.MP.No.738 of 2018, on the file of the VIII Metropolitan Magistrate, George Town, Chennai and set aside the orders dated 29.04.2019 and 02.04.2018 made in Crl.R.C.No.33 of 2018 and Crl.MP.No.738 of 2018 respectively and direct the learned Magistrate to take the complaint on file and issue process to the accused for the offences under Sections 463, 464, 467 and 471 punishable under Sections 465 and 471 read with Section 120-B of the Indian Penal Code and deal them in accordance with law.



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CRL.O.P.No.18912 of 2019

For Petitioner : Mr.M.Praveen Kumar
For Respondents : Ms.C.Harini for
M.V.Seshachai

ORDER

This Criminal Original Petition has been filed to seek direction on the complaint filed by the petitioner before the learned VIII Metropolitan Magistrate, George Town, Chennai, to take the complaint on file and to issue process to the accused after taking cognizance of the offences under Sections 463, 464, 467 and 471 punishable under Sections 465 and 471 read with Section 120-B of the Indian Penal Code.

2.The petitioner has given a private complaint before the learned VIII Metropolitan Magistrate, George Town, Chennai by alleging that the respondents have forged his signature in two Memorandum of Understandings and claimed that the petitioner is due to pay the loans alleged to have been availed by him. The learned Magistrate had chosen to reject the complaint after passing a speaking order on 02.04.2018. The said order was challenged by the petitioner by filing a revision petition in CRP.No.33/2018 before the learned II Additional Sessions Judge, Chennai.



The said revision petition was also dismissed on 29.04.2019 by confirming the order of the learned VIII Metropolitan Magistrate, George Town, Chennai dated 02.04.2018. Aggrieved over that the petitioner has filed this petition under Sec.482 Cr.PC for seeking direction to take the complaint on file.

3. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4. The 2nd and 4th accused are the finance companies for which, the accused 1 and 3 are the proprietor and director respectively. It is alleged by the petitioner that he had availed a loan of Rs.1,50,000/- in the year 2003 by mortgaging his property situated at 167,Jawaharlal Road,Minjur. It was a registered mortgage and during that time he handed over the original title deeds, patta and ten blank cheques drawn at Indian Overseas Bank, Vallur Branch and ten blank green sheets with his signatures and registered a power of attorney in favour of one Magesh Tated (employee of the first accused). The petitioner had paid the entire loan amount as early as in the



year 2003 but the first accused had failed to cancel the mortgage deed and failed to execute the receipt also. In the year 2011, the first accused cancelled the mortgage deed and returned the original documents. Even though the first accused has cancelled the mortgage deed, he did not return the blank cheques and signed blank green sheets by stating that they were misplaced. In the year 2013 he came to know that a property at T.Nagar was coming for auction and on verification the defacto complainant/petitioner participated in the auction and bought the property through auction sale by being the highest bidder. After he paid the entire sale consideration a registered sale deed was executed in favour of the complainant. However, the accused wanted the property situated at T.Nagar to be alienated to them but that was refused by the petitioner. Hence, the accused had forged certain signatures of the petitioner and fabricated two Memorandum of Understanding by inserting an Arbitration Clause. In the said Memorandum of Understanding, it is mentioned that the petitioner had availed some loan and agreed to repay the same. In the year 2016, the petitioner came to know about the arbitration proceedings and only then he came to know about the fabrication of the Memorandum of Understanding. Hence he filed the



private complaint before the VIII Metropolitan Magistrate, George Town, Chennai and the same was dismissed on the observation that it is premature because of a pending arbitration proceedings. Since the Arbitration proceedings cannot be a bar for criminal proceedings a direction should be given.

5. The learned counsel for the respondent submitted that the complaint given by the petitioner is without any basis and that is the reason why it was rejected. The disputed signatures in the Memorandum of Understandings have been sent by the Arbitrator himself to the reputed laboratory and a report is obtained. In the report it is stated that the signatures is not forged.

6. The petitioner is in the habit of absolving the proceedings by making such kind of allegations before the Arbitrator and before the Court in which respondent have taken action against the petitioner for dishonour of cheques. It is seen that the petitioner had given a complaint directly as a private complaint before the Court. Despite the petitioner had alleged that his signature was forged, he did not choose to avail the benefits of police investigation by lodging a police complaint. It is not his contention that the



police that no proper action had been taken by the police and hence, he filed the private complaint. When the arbitrator had chosen to send the disputed signatures to the one particular laboratory, the petitioner himself sent the signature to another laboratory and according to the report obtained by him, it is stated that there is difference in signatures. The learned VIII Metropolitan Magistrate, George Town, Chennai and the learned II Addl. Sessions Judge, Chennai had observed that when the proceedings pending before the Arbitrator it is premature for the petitioner to give a criminal complaint.

7.The learned counsel for the petitioner submitted that the arbitration proceedings cannot be a bar for the criminal proceedings. Had the petitioner given a police complaint it would have been possible for the police to take up the preliminary investigation and send the disputed signatures of the petitioner to the State Forensic laboratory through Court. Knowing pretty well that his allegations would warrant a detailed investigation and for which the service of the investigative agency is required, the petitioner had flouted the normal procedure and straight away went to the Court and filed



a private complaint. It is observed by the Court that it is premature to give a criminal complaint even before the arbitration proceedings are completed.

But it is noted that the very contention of the learned counsel for the petitioner is that the signatures have been forged and the Memorandum of Understanding has been fabricated. In that case, it is essential to conduct an enquiry on the allegations made by the petitioner but for which, I don't feel the private complaint procedure can be helpful.

8.Since the petitioner has got the liberty to give a police complaint and he did not make use of the opportunity and therefore, I do not feel any infirmity in the orders of the learned VIII Metropolitan Magistrate, George Town, Chennai and the learned II Addl. Sessions Judge, Chennai. However the complaint has been rejected on the ground that it is prematured one. Hence, I feel the petitioner can be given with a liberty to file a fresh complaint before the police by making the very same allegation, which he wanted to make now before the court through private complaint procedure and get the assistance of the investigative agency, to investigate and find out the genuineness of the signature of the petitioner in the Memorandum of



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Understandings. Since the petitioner did not avail such an opportunity and he has straight away come to the Court, his entitlement to lodge a complaint before the police would be subjected to the limitation period if any applicable to the penal Provisions of the alleged offences in the complaint.

With these observations, this Criminal Original Petition is **disposed** of.

06.01.2023

Index: Yes/No
Internet: Yes/No
Speaking /Non Speaking
Neutral citation: Yes/No

jrs



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To:

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1. The II Additional Sessions Court, Chennai
2. The VIII Metropolitan Magistrate, George Town, Chennai
3. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

jrs

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